

**Before the
Federal Communications Commission
Washington, D.C. 20054**

In the Matter of)	
)	
Digital Broadcast Content Protection)	MB Docket No. 02-230
)	
)	

PETITION FOR RECONSIDERATION

Genesis Microchip, Inc. (“Genesis”), by its counsel, pursuant to Section 1.429 of the Commission’s rules, hereby submits this Petition for Reconsideration (“Petition”) of the First Report and Order in the above-captioned proceeding (the “Broadcast Flag Order”).¹ Genesis is a leading supplier of display image processors to the computer and consumer electronics industries. In this Petition, Genesis urges the Commission to reconsider that portion of the Broadcast Flag Order which allows computers incorporating DTV tuners (and sold after July 2005) to pass an unprotected signal using a format compatible with the Digital Visual Interface (“DVI”) standard.² The DVI standard is a private industry standard protected by various patents held by companies that compete directly against Genesis. As a result, Genesis and other vendors of digital image processor technologies that want to compete in the computer/DTV markets will have to license the DVI specification along with any patents which claim the specification. As discussed below, this licensing process will stifle competition and have a significant adverse impact on Genesis and other vendors.

¹ First Report and Order in MB Docket 02-230, *Digital Broadcast Content Protection*, 68 FR 67599, adopted November 4, 2003.

² The rules adopted pursuant to the Broadcast Flag Order require the implementation of an attenuated form of DVI. *See* Sections 73.9003(a)(7) and 73.9004(a)(6). The rules use the term “demodulator products” to mean products which produce a data stream for the purpose of DTV reception. *See* 47 C.F.R. § 73.9000(g). For purposes of this Petition for Reconsideration, the terms “demodulator products” and “DTV tuners” are used interchangeably.

In a Petition for Reconsideration in another proceeding filed on December 29, 2003, Genesis described the anti-competitive impacts of Commission-imposed interoperability standards that are not developed by “open” standards organizations or which involve patents that are not fully and publicly disclosed to industry competitors.³ With specific regard to the DVI standard, Genesis described the patent licensing abuses which have already occurred.⁴ In order to prevent further abuses and the anticompetitive effects therefrom, Genesis seeks:

(1) Modification of the Broadcast Flag Order to conditionally approve DVI as an acceptable unprotected display interface standard for computers which incorporate demodulator products so long as a signal is passed having the visual equivalent of no more than 350,000 pixels per frame and 30 frames per second, provided a full public disclosure is made and approved in advance by the Commission with regard to (i) all patents and pending patents which are required to implement the DVI standard, (ii) all “necessary claims” contained in such patents required to implement the DVI standard, and (iii) all licensing terms and conditions associated with such patents; and

(2) Modification of the Broadcast Flag Order to conditionally approve DVI as an acceptable display standard for computers which incorporate demodulator products so long as a signal is passed having the visual equivalent of no more than 350,000 pixels per frame and 30 frames per second, provided the maintenance and further development of the DVI standard is turned over to an ANSI-accredited organization; and

(3) Clarification that any changes or amendments to the DVI Rev. 1.0 Specification will be required to undergo a public notice and comment process before adoption by the Commission.

³ Petition for Reconsideration filed by Genesis Microchip, Inc. in CS Docket No. 97-80 and PP Docket No. 00-67, *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment*, filed on December 29, 2003 (“Genesis Plug & Play Petition”), attached hereto as Attachment 1 and incorporated herein by reference.

⁴ See Attachment 1 at 4-5.

DVI is not an Open Standard

The DVI specification is the product of the Digital Display Working Group (“DDWG”), a private standards-making organization comprised of eight manufacturers including Silicon Image Inc. (“SII”), the holder of certain DVI patents. The DDWG does not have a policy of including the views of those who might be affected by their standards nor does it have a policy requiring the disclosure of relevant patents or the fair and non-discriminatory licensing of such patents. Although DDWG offers a public “Adopters Agreement” which purports to license the DVI specification royalty-free, SII has taken the position that the DVI license is limited solely to the computer/display interface and does not cover DTV tuners or other consumer electronics products. The Adopters Agreement is silent as to what patents claim DVI and as to what specific claims are considered “necessary” to implement the DVI specification. Because the DDWG has no procedures for resolving such disputes internally, Genesis has, for the past two years, been a defendant in litigation with SII over the scope and interpretation of the DVI license.

Commission Policies Disfavor Private Industry Standards

Against the DVI backdrop, stands the Commission’s long history and often-stated policy of adopting only open industry standards. A review of Commission standards making over the past 50 years reveals that it has never adopted a technical standard that was not the product of an accredited (or open) standards organization, the work of a federal advisory committee or the result of a notice and comment rulemaking in which the technical standard was extensively examined by the staff and the public.⁵ Indeed, this proceeding and the related Plug & Play Order⁶ mark the first time in history that the

⁵ See Docket No. 13506, *Amendment of Part 3 of the Commission’s Rules and Regulations to Permit FM Broadcast Stations to Transmit Stereophonic Programs on a Multiplex Basis*, 25 Fed. Reg. 4257 (May 12, 1960) (private standards were subject to extensive testing under the control of the Commission, held open for public comment, and the Commission required that all submissions were accompanied by information pertaining to potential intellectual property and licensing concerns).

⁶ Second Report and Order and Second Further Notice of Proposed Rulemaking in CS Docket No. 97-80 and PP Docket No. 00-67, *Implementation of Section 304 of the Telecommunications Act of 1996*:

Commission has imposed on industry competitors a privately developed standard whose patents are undisclosed.⁷ In taking such action, the Commission is making a serious mistake with untold anticompetitive consequences – a mistake which should be corrected promptly.

Three years ago, the Commission established, in effect, the regulatory paradigm for the development and promulgation of interoperability standards. At the time, the Commission was dealing with network terminal equipment and chose to rely on open industry standards rather than its own Part 68 rules, stating that “[w]e conclude that only standards development organizations that meet the due process requirements for ANSI accreditation for either Organizations or Standards Committees may develop technical criteria [for interoperability]...”⁸ The DDWG falls considerably short of meeting these due process requirements and thus, consistent with clear Commission policy, the DVI standard cannot be imposed on manufacturers by Commission mandate. Genesis, therefore, urges the Commission to omit any references in the Part 73 rules to a mandatory DVI interface.

The Broadcast Flag Rules Should not Mandate the DVI Standard Without Full Disclosure of Patent Terms and Conditions

The Commission has elected to regulate by adopting “compliance rules” which include, among other things, implementation of the DVI interface standard. DVI, however, is but one of several digital display standards on the market and others are actively under consideration or undergoing development by industry organizations. Thus, the Commission’s goal of protecting against digital content being indiscriminately distributed over the Internet by computer users could just as easily have been accomplished by adopting digital display performance specifications, rather than picking one standard over others.

Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment, adopted September 10, 2003 (“Plug & Play Order”).

⁷ See Genesis Plug & Play Petition, *supra* note 3.

⁸ 2000 Biennial Regulatory Review of Part 68 of the Commission’s Rules and Regulations, 15 FCC Rcd. 24,944, 24,964 (2000) (emphasis added).

The Motion Picture Association of America (“MPAA”) and 5C⁹ had recommended the adoption of several alternative output “rules” for unscreened and unmarked content passed from any demodulator products. DVI output (at an attenuated resolution) was recommended by MPAA and 5C as an “accommodation for legacy PC equipment and displays.”¹⁰ The Commission’s new rules, however, go beyond the MPAA/5C recommendations by strictly limiting the types of outputs to which unscreened and marked content may be passed. For demodulators incorporated into a computer product, the rules provide that such content may only be passed to “an unprotected output operating in a mode compatible with DVI Rev. 1.0 Specification....”¹¹ Because the Commission adopted the MPAA position, vendors of integrated products (computer/DTV) who want to sell these products for use with “legacy” digital display monitors, will be required to license the DVI specification to compete in this market, despite the fact that the DVI patents and “necessary claims” have yet to be fully disclosed or licensed in a non-discriminatory manner.

Genesis submits, therefore, that the Commission must impose several pre-conditions to the acceptance of DVI as a valid output display interface standard for computers which incorporate demodulator products. First, the Commission must require full public disclosure of all patents, pending patents and “necessary claims” which are required to implement DVI Rev 1.0 Specification. Genesis is aware of two issued patents which SII asserts read on the DVI Rev. 1.0 Specification and contain claims that are not licensed under the DVI Adopters Agreement, however, there may also be patents pending. The Commission must insist that the DDWG and/or SII make full disclosure of the DVI patent position, arguably, an implicit requirement under the Commission’s existing patent policy and one that should be strictly enforced.¹²

⁹ 5C is a group of 5 companies; Hitachi, Ltd., Intel Corporation, Matsushita Electric Industrial, Co., Ltd., Sony Corporation, and Toshiba Corporation that have formed the Digital Transmission License Administrator, LLC.

¹⁰ See Broadcast Flag Order, *supra* note 1 at n. 110.

¹¹ See Section 73.9003 and 73.9004.

¹² 3 FCC 2d 26 (1961).

Second the Commission must insist on a full public disclosure of the terms and conditions under which the DVI specification will be licensed to the industry.¹³ Genesis notes, in this regard, that the Commission's interim approval procedures in this docket require such disclosure for all new output protection technologies.¹⁴ Such disclosure requirements and the notice and comment procedures, however, do not apply to standards, like DVI, which were adopted during the course of the rulemaking. Genesis can discern no rational basis for requiring a different, and higher, standard of disclosure for new technologies than for those such as DVI, adopted during the course of this proceeding.

Third, to ensure that the DVI specification is not modified or changed in a way that harms competition, the Commission must insist that all further standards activities surrounding DVI be conducted through an open standards-making organization with the same due process guarantees as required by ANSI. The Commission is ill-equipped to function as a standards convener regarding fast moving technologies that are not core Commission concerns. Digital display interfaces would seem to be one such technology that is better handled by open standards organizations with clear patent licensing policies and internal procedures for addressing licensing abuses. Finally, the Commission should make it clear that by specifying the "DVI Rev 1.0 Specification" in its rules, it intends for any changes to this standard to first undergoing public notice and comment. This will prevent patent holders and others from manipulating the specification for anti-competitive gain and will parallel the interim authorization procedures set forth in the rules.

¹³ The Commission has a history of requiring the disclosure of licensing terms and conditions when patents are involved in standards development. *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 11 FCC Rcd 17771 (1996); *see also* Docket No. 13506, *Amendment of Part 3 of the Commission's Rules and Regulations to Permit FM Broadcast Stations to Transmit Stereophonic Programs on a Multiplex Basis*, 25 Fed. Reg. 4257 (May 12, 1960); *see also* 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations, 15 FCC Rcd 24,944 (2000).

¹⁴ See Section 73.9008 governing interim approval procedures.

Conclusion

In light of the above considerations, Genesis respectfully requests the Commission to reconsider that portion of the Broadcast Flag proceeding allows computers incorporating DTV tuners (and sold after July 2005) to pass an unprotected signal using a format compatible with the Digital Visual Interface (“DVI”) standard. Specifically, Genesis urges that the Commission, if it is to permit DVI use, must require full disclosure of all patents, pending patents and necessary claims required to implement the DVI 1.0 specification; require full disclosure of the terms and conditions under which DVI specifications will be licensed; and require that future versions of the DVI standard be adopted under the auspices of an open standards making organization. Only by these means can the Commission assure that the public will be protected.

Respectfully Submitted,

Terry G. Mahn
Robert J. Ungar
Counsel for Genesis Microchip Inc.

January 2, 2004